89-355 (1)

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NO. 88-3419

IN THE

SUPREME COURT OF THE UNITED STATES

JULY TERM, 1989

EOLA L. MOORE,

PETITIONER,

VERSUS

ORLEANS PARISH SCHOOL BOARD ET AL.,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

EOLA L. MOORE
3601 Havana Street
New Orleans, LA 70122
(504) 283-5756
Pro Se

132 pp

QUESTIONS PRESENTED

1. Did the Court of Appeals err in failing to apply the objective part of the qualified immunity test in this Court's decision in Harlow v. Fitzgerald, 102 S.Ct. 2727 (1982) and Wood v. Strickland, 420 U.S. 308 (1975) clearly settles law component in a pro-defendant manner by affirming the District Court's judgment in dismissing Petitioner's state action claim arising under the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. §1983 by holding "such a suspension without pay prior to a tenure hearing by the school board is not a violation of Due Process?"

2. Did the Court of Appeals err in this Court's decision in McDonald v. City of West Branch, 466 U.S. 284 (1984) in fashioning a §1738 federal preclusion rule for an unappealed arbitration proceeding

for preclusive effect purposes barring Petitioner's state action claim arising under the Due Process Clause and 42 U.S.C. §1983 by affirming the District Court's judgment in dismissing Petitioner's claim under §1983 and holding:

> "We have already held that the administrative scheme provided for the termination of tenured Louisiana teachers affords adequate protection of the constitutional right to due process."?

3. Did the Court of Appeals misapply the Federal Doctrine of Administrative Remedy in the narrow reading of Parratt's due process holding in this Court's decision in Logan v. Zimmerman Brush Co., 455 U.S. 422, 435-36 (1982) in affirming the District Court judgment in granting the motion to dismiss Petitioner's state action claim and §1983 under Parratt/Hudson rule pursuant to Rule 12(b)(6) FRCP and concluding with a broad reading of

Parratt's due process holding by stating:

> "This is all that due process requires where the state has provided an adequate post-termination damage remedy."?

4. Did the Court of Appeals err in this Court's decision in Daniels v. Williams, 106 S.Ct. 662 (1986) and Davidson v. Cannon, 106 S.Ct. 668 (1986) in affirming the District Court's judgment by dismissing Petitioner's state action claim under the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. §1983 by holding that:

> "A Section 1983 claim for deprivation of rights will not lie where there is an adequate state post-deprivation remedy available."?

PARTIES BELOW

The following persons were parties to the prior §1983 federal civil proceeding in the United States Court of Appeals for the Fifth Circuit, the Court whose judgment is sought to be reviewed:

Orleans Parish School Board; Dr. Carol Chance, Principal; John Jones, Social Studies Supervisor; Cynthia S. Caliste, Former Interim Associate Superintendent; Dr. Everett Williams, Superintendent of Schools; and Dr. Frank D. Fudesco, School Board Union Arbitrator (Employee Relations Officer). Petitioner sues all Respondents individually in their official capacity.

Wherefore, Petitioner Eola Moore prays for Judgment against Respondents Orleans Parish School Board for actual compensatory damages in the amount of $72,475.00 and punitive damages in the amount of $50,000.00 against school officials individually in their official capacities for acting with malice and ultimate intention of depriving Petitioner of constitutional rights, and such other relief that to this Court seems just, proper, and equitable.

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IN THE

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Petitioner,

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Respondents.

PETITION FOR A WRIT OF CERTIORARI
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OPINION BELOW

The District Court applied the §1738 rule to Petitioner's unappealed state action claim and 42 U.S.C. even though this court's decision in McDonald v. City of West Branch, 466 U.S. 284 (1984) strongly indicated, if only implicitly, that 28

U.S.C. §1738 does not in §1983 cases mandate the application of state preclusion rule to an unappealed arbitration proceeding involved herein.

The trial court took the arbitration dismissal conference held for the Petitioner on August 10, 1987, standing alone and characterized it as a state administrative agency proceeding, quasi-judicial in nature, for §1738 preclusive effect purposes or one of "administrative" preclusion supported by the policies of repose and federalism. The District Court dismissed the complaint arising under the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. §1983 pursuant to Rule 12(b)(6) FRCP by holding that:

> "Any claim that the defendants have failed to comply with the statutory scheme is a matter for state law. The administrative scheme provided for the termination of tenured Louisiana teachers is such an adequate remedy."

Then the District Court went on to cite Franceski v. Plaquemines Parish School Board, 602 F. Supp. 691, 694 (E.D. LA.), aff'd. 772 F.2d 197 (5th Cir. 1985) which dealt with the preclusive effect of a prior state court judgment.

The District Court granted a summary judgment on May 5, 1988, for the Defendants on the basis of res judicata, inter alia effect to an award in an unappealed arbitration proceeding brought pursuant to the term of a collective bargaining agreement.

The District Court judgment under the Parratt/Hudson rule is unreported, but is produced herein at Appendix 1-3a.

The Court of Appeals' opinion affirming the District Court's judgment is unreported, but is produced herein at Appendix 8a.

The results of the arbitration dismissal conference of the Orleans Parish

school board held for Petitioner on August 10, 1987, is unreported but is produced here in at Appendix 33a, 35a, & 39a.

JURISDICTION

The judgment sought to be reviewed by writ of certiorary was dated and entered March 22, 1989. The Court of Appeals' order denying Petitioner's request for a rehearing was entered and filed April 26, 1989, and is reproduced herein at Appendix 16a. The statutory provision conferring jurisdiction on this Court to review the judgment in question by writ of certiorari is 28 U.S.C. § 1254 (1) (1982).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitutional Provisions

1. 28 U.S.C. 1331, 1343(3),1343(4).

2. Due Process Clause of the Fourteenth Amendment to the U.S. Constitution of the United States. It states:

> " . . . nor shall any state deprive any person of life, liberty, or property, without due process of law." U.S.C.A. Const. Amend. 14.

3. Civil Rights Act (42 U.S.C. § 1983). It states:

> "Every person who, under color of any statute, ordinance, regulation custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

4. The Constitution's Full Faith and Credit Clause is implemented by the full faith and credit statute, 28 U.S.C. §1738. That statute reads in pertinent

part:

> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

Statutes Involved:

1. Louisiana teacher tenure statute: Louisiana Revised Statutes 1950, under the provision of Title 17, Section 462. 443.

> "§462. Permanent teachers; causes for removal; procedure.
>
> "A permanent teacher shall not be removed from office except on written and signed charges of immorality, or of wilful neglect of duty, or of incompetency, or of being a member of or of contributing to any group, organization, movement or corporation that is prohibited by law or injunction from operating in the State of Louisiana, and then only if found guilty after a hearing by the Orleans Parish School Board, which hearing may be private or public, at the option of the teacher. At least fifteen days in advance of the date of the hearing, the school board

shall furnish the teacher with the following:

"(1) A copy of the written charges;

"(2) A list of the names and last known addresses of all witnesses the board may or will use at the hearing;

"(3) A copy of all documents the board will or may introduce during the course of the hearing.

"The teacher shall have the right to appear before the board with witnesses in his behalf and with counsel of selection all of whom shall be heard by the board at the said hearing. At least fifteen days in advance of the date of the hearing, the teacher shall furnish to the school board the following:

"(1) A list of the names and addresses of all witnesses the teacher may or will use at the hearing;

"(2) A copy of all documents the teacher will or may introduce during the course of the hearing.

"Nothing herein contained shall be construed as depriving the Orleans Parish School Board or any teacher thereof of any right of action it or they may be entitled to under the constitution and laws of the State of Louisiana."

2. Act 9, First Extraordinary Ses-

sion of the 1977 Louisiana Legislature and Act 521 of the Revised State Guideline for LEA Personnel Evaluation Programs (1977 La. Rev. Stat. 17:391.5).

> "Every teacher shall be evaluated every third year by a team of evaluators, at least one of whom shall be the teacher's principal or, if the teacher is employed in a situation where there is no principal, the equivalent level supervisor, and at least one of whom shall be an independent observer employed elsewhere.
>
> "The evaluation shall be a synthesis of observations made by and recorded on the appropriate standard instrument developed for the purpose pursuant to La. Rev. Stat. 17:391.5. The evaluation may result in either a satisfactory, need improvement, or non-satisfactory evaluation.
>
> "Each teacher who receives a non-satisfactory evaluation, when evaluated as provided in Subsection A of this section, shall undertake a program of remediation and reevaluation. The program of remediation shall include activities directed by the teacher's principal, as well as self-directed activities.
>
> "During the first year following a non-satisfactory evaluation, the teacher shall be assessed for subject matter competency as well as reevaluated. If, by the end of the first year of remediation and re-

evaluation, the teacher receives a satisfactory evaluation and is deemed satisfactory regarding subject matter competence, then the remediation and reevaluation program will terminate and the teacher shall not be evaluated again, as provided for in this section, for three years.

"If the teacher does not receive a satisfactory evaluation or is not deemed satisfactory regarding subject matter competence during the first year, the remediation program shall continue and the board shall certify the teacher as 'Provisional/ In Remediation,' as provided in L.R.S. 17:391.5. . . .

"If the teacher does not receive a satisfactory evaluation and satisfactory subject matter assessment by the end of the second year, then the 'Provisional/In Remediation' certificate shall expire and no further certification shall be issued." La. Rev. Stat. 17:391.5.

STATEMENT OF THE CASE

On December 7, 1987, Eola Moore, a tenured Louisiana civics teacher in the Orleans Parish School System, filed this subsequent unappealed arbitration proceeding under §1983 pro se in the United States District Court for the Eastern District of Louisiana. Petitioner brought this prior §1983 federal civil proceeding res judicata, state action claim arising under the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. §1983 against the Orleans Parish School Board, the Superintendent of Orleans Parish Schools, and various school officials herein acting under color of state law who, without due process of law, unlawfully discharged Petitioner and deprived her of "liberty" interest and constitutionally protected property interest of continued employment.

On August 27, 1987, Petitioner was discharged verbally without specific written charges and the denied due process to a terminated teacher of an administrative proceeding as provided by the Louisiana Tenure Teacher Statute 17:462, 443 and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution which prohibits the school board from removing a teacher from office in an arbitrary manmer. (See Appendix 45a and 47a.)

Petitioner had no chance to respond because there was nothing to defend. Petitioner's unlawful firing did not specifically relate and affect the administration of the office, her performance of her duties, and showing she was not a proper person to hold the office. (See Board of Regents v. Roth, 408 U.S. 564 (1972). See Appendix 28a.

The discharge on August 27, 1987, was

unconstitutionally motivated by the Board, Superintendent of Schools, and various school officials acting through their union arbitrator, Dr. Frank Fudesco, and recommendation of the personnel department under newly appointed leadership because of a lack of adequate training in the personnel department by the School Board. This fact is noted in the Appendix on page 38a.

Petitioner's complaint is that her suspension without written charges was an abuse of governmental power in connection with Act 9 of the 1977 La. Rev. Stat. 17: 391.5 requiring the evaluation of tenured teachers for professional improvement in subject matter competency and remediation for school enhancement beginning from September 1977.

Respondents did not comply with the Teacher Accountability Statute requiring

two consecutive years in the professional improvement program. Petitioner was not permitted to participate in the 1987-88 school year or second year in the remediation program pursuant to the statute. There was no rational basis for Petitioner's discharge without a tenure hearing, which was not feasible at the time of the deprivation on August 27, 1987. However, Respondents decided to fire Petitioner in an arbitrary manner, accomplishing their unconstitutional motives, in order to ruin Petitioner's good name, reputation, integrity and to deprive her of constitutionally protected "property" interest in continued employment. Amend. 14. 42 U.S.C. §1983 and L.S.A.-R.S. 17:442,443. See Perry v. Sindermann, 408 U.S. 594 (1972) and Board of Regents v. Roth. See Appendix 52a.

Petitioner brought this civil action

in the United States District Court for the Eastern District of Louisiana to challenge the grossly negligent, reckless, and ultimately intentional misconduct of the School Board and individual school officials acting in an official capacity, but in a manner not authorized by the Louisiana Teacher Tenure Law and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

The complaint alleged three causes of action--a breach of contract by the School Board, a breach of its state statutory duty, and wrongful interference by school officials herein with Petitioner's employment contract for the 1987-88 school term in connection with Act 9 of the 1977 Louisiana Teachers Accountability Statute La. Rev. Stat. 391.5. See Appendix 31a.

Petitioner filed this state action civil proceeding in the District Court in

which she sought reinstatement, damages for breach of contract by the Board, actual compensatory damages, punitive damages and such other relief as the Court would deem just and equitable.

The first motion for an extension of time was filed by Defendants on December 29, 1987. Defendants stated they needed and were entitled to an additional twenty (20) days from and after January 4, 1988, or until January 25, 1988, within which to prepare appropriate responsive pleadings to the original complaint of Petitioner on December 7, 1987. The Court granted the motion as unopposed.

The answer was filed on behalf of the Orleans Parish School Board et al. on January 26, 1988.

On April 12, 1988, the School Board filed a motion for an order to stay proceedings, or, alternatively, for an order

to extend time for amending pleadings pending a tenure hearing for Moore and a motion to dismiss pursuant to Rule 12(b)(6) FRCP.

Defendants' motion for an order to stay proceedings, or alternatively, for an order to extend time for amending pleadings pending a tenure hearing for Moore was considered as moot and denied by the court.

In the United States District Court for the Eastern District of Louisiana, Judge Martin L. C. Feldman dismissed petitioner's claim action under Fed. R. Civ. P. 12(b)(6) on May 5, 1988. The Court of Appeals Fifth Circuit affirmed. On Petitioner's request for a rehearing, the Court of Appeals denied the rehearing on April 26, 1989. The trial court took both the Parratt/Hudson rule and the alleged procedural due process violation into account and dismissed Petitioner's state action

claim arising under the Due Process Clause and 42 U.S.C. §1983 by holding, "A section 1983 claim for deprivation of rights will not lie where there is an adequate post state-provided remedy" and then relying upon the Fifth Circuit's decision in Franceski v. Plaquemines Parish School Board, 602 F. Supp. 691, 694 (E.D. La.), aff'd F.2d 198 (5th Cir. 1985), which dealt with the preclusive effect of state proceedings on federal court proceedings determined solely by state law. See this Court decision in Migra v. Warren City School District Board of Education, 465 U.S. 75 (1984).

The District Court went on to cite to Petitioner Parratt v. Taylor, 451 U.S. 527 (1981) and holding "the administrative scheme provided for the termination of tenured Louisiana teachers is such an adequate remedy, again citing Franceski,

502 F. Supp. at 694 and concluding "any claim that the defendants have failed to comply with the statutory scheme is a matter for state law."

In Franceski, the Plaintiff's employment was terminated by the Plaquemine Parish School Board without due process of law. She pursued her claim in state court and was ultimately reinstated with back pay. Thereafter, the Plaintiff filed a complaint in the Federal District Court alleging violations of civil rights under 42 U.S.C. §1983 and 1985. The suit was dismissed by the Court's rendering of a summary judgment.

On appeal, the Fifth Circuit affirmed the District Court's judgment by holding that the Plaintiff had received all the Federal due process due to her under the law. The preclusive effect of a prior state proceeding is ordinarily determined

by state law pursuant to the mandate of 28 U.S.C. §1738 as reflected in this Court's preclusion cases.

It is now settled that a federal court must give to a state court judgment the same preclusive effect as would be given that judgment under the law of the state in which the judgment was rendered. In Allen v. McCurry, 449 U.S. 90 (1980), this Court said:

> "Indeed, though the federal courts may look to the common law or to the policies supporting res judicata and collateral estoppel in assessing the preclusive effect of decisions of other federal courts, Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so. . . ." Id. at 96.

This principle was restated in Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982):

> "Section 1738 requires federal courts to give the same preclusive effect to state court judgments that those judg-

> ments would be given in the courts of the State from which the judgments emerged." Id. at 455.

In contrast to the Franceski case, Petitioner's case involves the preclusive effect of a prior §1983 federal civil proceeding which is determined by federal law. Also, §1738 and its mandate to use state law applies, strictly speaking, only to prior state judicial proceedings, but not to unreviewed arbitration proceedings herein. See this court decision in McDonald v. City of West Branch and administrative fact finding in University of Tennessee v. Elliott, 106 S.Ct. 3220 (1986), aff'g. in part and revg. in part, 765 F.2d 982 (6th Circuit 1985).

Eola Moore, Petitioner herein, was employed by Respondent Orleans Parish School Board as a teacher for approximately twenty-one years. The Board had a written continued employment contract of

three years with Petitioner. The 1987-91 contract was the result of a collective bargaining negotiation which included a provision requiring the Orleans Parish School Board to recognize the United Teachers of New Orleans as the bargaining agent for the Petitioner. See Appendix 29a.

Based upon the "official action" of the Board at its meeting on May 26, 1987, a resolution was adopted renewing Petitioner's employment contract for the 1987-88 school year, assuring her of employment for the next school year as envisioned by Act 745 of 1977. See Appendix 31a.

Upon being advised by the Board of her continued employment for the fall semester of the 1987-88 school year, Petitioner accepted the appointment by letter on May 27, 1987.

The 1987-88 school year commenced on

August 27, 1987. Not having received a written notice and signed charges of the Board's decision not to rehire her, revoking her continued employment contract within a reasonable time fixed by it before the school year began, Petitioner reported to work to fulfill her contract. See Appendix 37a. Upon reporting to work, the principal's account clerk informed her that she had been suspended without pay by Rewspondent Dr. Frank Fudesco, School Board Union Arbitrator.

The Board, acting through its arbitrator, Frank Fudesco, known as "the Employee Relations Officer," had suspended Petitioner verbally without pay by way of its de facto official policy or unconstitutional custom, replacing her by personnel action with a teacher from another school in the district teaching the identical subject (civics) but with less experience

and seniority and with only a minor degree in social studies. See Appendix 33a & 35a.

As of the beginning of the school term on August 27, 1987, Petitioner had not received an administrative notice or proceeding which could be characterized as quasi-judicial in nature consistent with procedural due process for the preclusive effect of an unreviewed state administrative agency quasi-judicial factfinding the forum state's court would do, or the rule of "administrative" preclusion supported by the policies of repose and federalism. See this court's decision in University of Tennessee v. Eiliot, 106 S. Ct. 3220 (1986), aff'g. in part and revg. in part, 766 F.2d 982 (6th Circuit 1985) and McDonald v. City of West Branch, 466 U.S. 284 (1984).

Petitioner began working for Repondent Board as a certified social studies teacher on December 6, 1955.

Three years after she was hired, Petitioner Moore completed the three-year probationary period as a teacher and acquired tenure rights effective August 29, 1970, under the provision of Title 17, Section 461, Louisiana Revised Statute 1950. See Appendix 43a.

Petitioner was a tenured teacher in the state of Louisiana and employed by the Respondent Orleans Parish School Board and could only be removed from office pursuant to the provision of Title 17, Sections 462, 443--Louisiana Teacher Tenure Statutes 1950--L.S.R.-R.S. 17:462, 443, and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. See Cleveland Board of Education v. Loudermill, 105 S.Ct. 1487 (1985).

The school boards in the several parishes are "state agencies" created by the Legislature and invested with such

powers as have been confided to them by the creating authority, including that of selecting, employing, and discharging of teachers.

The Orleans Parish School Board is responsible for the general operation of the public school system in Orleans Parish, including but not limited to the responsibility for "personnel decisions" regarding school teachers employed by that school system. Act No. 100 of 1922 §49 and 20; as amended by Act No. 59 of 1936 (L.S.A.-R.S. 17:81; 17:413). Petitioner remained employed by Respondent Orleans Parish School Board from December 6, 1965, until she was unconstitutionally discharged on August 27, 1987. See Board of Regents v. Roth and Cleveland Bd. of Educ. v. Loudermill.

During the more than two decades in which Petitioner was employed by Respond-

ent Orleans Parish School Board, Petitioner has always received satisfactory evaluations until she was transferred to Rabouin Vocational School for the 1986--87 school year.

During the 1986-87 school year because of a decrease in enrollment at her seniority school (Carver Senior High School), Petitioner was transferred by personnel action to L. E. Rabouin Vocational High School to teach civics under the principalship of Respondent Dr. Carol Chance.

In the beginning of the 1986-87 school year, Petitioner, along with other tenured teachers, was observed by the principal, Dr. Carol Chance, and in Petitioner's case, Supervisor of Social Studies, John Jones, pursuant to the 1977 Louisiana Teacher Accountability Statute, La. Rev. Stat. 17:391.5, requiring the

evaluation for professional improvement in subject matter competency and remediation of tenured teachers at least every three years beginning from September 1977. This is the state instrumentality that made the §1983 challenged conduct under color of law possible. See Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). See Appendix 52a.

Petitioner contends that during the 1986-87 school year the principal and social studies supervisor harassed and tried to impede her teaching performance in civics the entire year by placing an unusually high number of waivered students in her third and fourth period classes during the first three months of school. These periods were chosen by the principal, Dr. Carol Chance, and social studies supervisor, John Jones, for observation

purposes in connection with the 1977 Louisiana Teacher Accountability Statute L.S.A.-R.S. 17:391.5. This kind of misconduct by the principal and social studies supervisor could have been devastating to a probationary teacher. The principal and social studies supervisor's evaluations were not prepared in accordance with the 1977 Louisiana Teacher Accountability Statute requiring the use of objective evaluation standards. See Appendix 18a, 21a, and 23a.

Petitioner contends that the valid state policy of Act 9 of the Louisiana Legislature 1977 and L.E.A. Personnel Evaluation Program should have been foreseeable in that evaluation programs based soleiy on schooi officials' observation in determining tenured teachers' competency in the State of Louisiana would cause some school officials to act recklessly and

disregard a substantial risk of danger that is either known to them or would have been apparent to reasonable persons in their positions resulting in teachers' constitutional deprivation. See Appendix 52a.

In Tuttle, Justice Brennan, under the causation approach, said:

> "It would be enough for liability that local government should have reasonably foreseen that its valid official policy or custom would bring about appellant's constitutional deprivation." See this court's decision in City of Oklahoma City v. Tuttle cite at 105 S.Ct. 2427 (1985).

During the close of the 1986-87 school year, Respondents Carol Chance and various school officials herein recommended verbally that the Petitioner's employment with Respondents Orleans Parish School Board be terminated because of incompetence. This recommendation was not feasible for the 1987-88 school year.

See Appendix 19a, 21a, and 23a.

Thereafter, Respondent Frank B. Fudesco, School Board Arbitrator, conducted a review of Petitioner's performance referring to it as a dismissal conference. Moore was not advised of the results of the conference prior to the first day of school, August 27, when she was told verbally that Dr. Fudesco had suspended her without pay for the period of August 27, 1987, to November 1, 1987. This fact is noted in a letter from Eola Moore to the principal, Dr. Carol Chance, dated August 27, 1987. On August 28, Moore received an untimely notice from Respondent Cossette West, Interim Coordinator of Personnel, and the principal confirming the suspension without the signatures of policy-making officials. (See Appendix 38a.)

On September 24, 1987, Petitioner

Eola Moore received a letter from School Board Arbitrator known as the Employee Relations Officer (Dr. Frank B. Fudesco) informing her that he was upholding the recommendation of dismissal and that Petitioner was to remain on suspension without pay pending a Board tenure hearing. See Appendix 39a.

Petitioner's employment is governed by Louisiana Revised Statute 17:452 and 443, which states, in pertinent part:

> "A permanent teacher shall not be removed from office except upon written and signed charges of immorality, or of willful neglect of duty, or of incompetency, or of being a member of or contributing to any group, organization, movement, or corporation that is prohibited by law of injunction from operating in the State of Louisiana, and then only if found guilty after a hearing by the Orleans Parish School Board. [Emphasis added] (See Appendix 45a and 47a.)

Petitioner contends strongly that she did not receive notice of a tenure hearing before the School Board as provided

under the statute. Petitioner was not afforded an opportunity to respond to the incompetency charge or to challenge the suspension without pay. Under Louisiana law Moore was a tenured teacher and by statute, as such an employee, could be terminated only for cause and was entitled to a state agency administrative review before August 27, 1987. See Appendix 45a and 47a.

The gravemen of Petitioner's complaint is that on September 24, 1987, which was 28 days after she had been suspended without cause and pay and the 1987-88 school year had begun, she received an apologetic letter from Respondent Dr. Frank Fudesco, who is not a policy-maker, informing her that he had suspended her verbally on August 27, 1987, until a post-termination hearing could be arranged and the charges brought against her could be

prepared by the Board attorney. (See Appendix 39a.)

On November 12, 1987, 75 days after school had commenced and the suspension of Petitioner without written and signed charges and pay, she received a list of nonfactual, unreliable, and invalid teaching deficiencies from the Superintendent of the Orleans Parish School System based on the negative and grossly unfair evaluation completed by the principal and social studies supervisor for the academic school year 1986-87.

Petitioner did not pursue her state administrative remedy held on April 20, 1988, which was 219 days after the suspension without pay. See University of Tennessee v. Elliott, 106 S.Ct. 3220 (1986).

REASONS FOR GRANTING THE WRIT

This claim presents a setting in which the District court had every opportunity to introduce the preclusive effect of a prior §1983 federal proceeding which is determined solely by federal law and the preclusion of res judicata or a collateral estoppel effect to an award in an arbitration proceeding brought pursuant to the terms of a collective bargaining agreement.

The case reflects the Supreme Court's new approach to due process as demonstrated by Daniels and Davidson based on the Due Process Clause because the scope of due process has been cut back so that negligent conduct no longers triggers a due process analysis.

It is also significant that this case demonstrates that the qualified immunity is an affirmative defense, and this

Court has developed a unitary standard for qualified immunity. The District Court had every opportunity to apply the Harlow v. Fitzgerald, 102 S.Ct. 2727 (1982) and Wood v. Strickland cases in a prodefendant manner.

Respondents should have had the burden of proving their qualified immunity by a preponderance of the evidence. This Court generally indicated in Carey v. Piphus, 435 U.S. 247 (1978)and Mt. Healthy City School District v. Doyle, 429 U.S. 274 (1977) that:

> "Once the plaintiff proves constitutional violations the burden of proof is on the defendant to show by a preponderance of the evidence that there was no but for cause-in-fact relation between the constitutional violation and plaintiff's damages. If a defendant cannot do so, then the plaintiff recovers compensatory damages."

This Court held that government officials performing discretionary functions generally are shielded from liabil-

ty for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. See Procunier v. Navarette, 434 U.S. 555 (1978) and Wood v. Strickland, 420 U.S. 308 (1975) at 322.

Petitioner contends that the Court of Appeals failed to observe that the trial court did not recognize that Respondents Orleans Parish School Board and school officials violated clearly settled statutory or constitutional rights of which reasonable persons would have known. They violated clearly settled procedural due process law and the duty to know the law. The District Court granted Respondents' motion of a summary judgment under the Parratt/Hudson Rule pursuant to Fed. R. Civ. P. 12(b)(6).

I

The Court of Appeals erred in failing to apply the objective part of the qualified immunity test in this court's decision in Harlow v. Fitzgerald, 102 S.Ct. 2727 (1982) and Wood v. Strickland, 420 U.S. 308 (1975) clearly settled law component in a prodefendant manner by affirming the District Court's judgment in dismissing Petitioner's state action under the Due Process Clause of the Fourteenth Amendment and 42 USC §1983 by holding " such a suspension without pay prior to a tenure hearing by the School Board is not a violation of Due Process."

A. The Wood's Approach

The following quotation is from Justice White's majority opinion in the Wood's decision.

"The official himself must be acting sincerely and with a belief that he is doing right, but an act violating a student's constitutional rights can no more be justified by ignorance or disregard of settled, indisputable law on the part of one entrusted with supervision of students' daily lives than by the presence of actual malice. To be entitled to a special exemption from the categorical remedial language of §1983 in a case in which his action violated a student's constitutional rights, a school board member

> who has voluntarily undertaken the task of supervising the operation of the school and the activities of the students must be held to a standard of conduct based not only on permissible intentions, but also on knowledge of the basic, unquestioned constitutional rights of his charges. Such a standard imposes neither an unfair burden upon a person assuming a responsible public office requiring a high degree of intelligence and judgment for the proper fulfillment of its duties, nor an unwarranted burden in light of the value which civil rights have in our legal system. Any lesser standard would deny much of the promise of §1983." [Emphasis added]

In this 1975 Wood decision, the Court ruled that school officials could be held liable if they knew or reasonably should have known that the action they took within their sphere of official responsibility would violate the constitutional rights of the students affected.

Based on the Wood case, courts held principals, superintendents and school board members personally liable for damages to students or teachers whose rights they violated.

B. The Harlow v. Fitzgerald Decision

This Court's decision in Harlow substantially changed Wood's qualified immunity test by largely eliminating the subjective part and by insisting the objective part of the test--now the primary part--should be applied in a prodefendant manner.

This Court's purpose was to permit the defeat of unsubstantial claims without resort to actions for damages against White House aides to former President Nixon based on certain federal statutes and the First Amendment. In ruling these aides were protected by qualified immunity, this Court went on to eliminate what it called the subjective part of the test as derived from Wood v. Strickland acting with malicious intention to cause a deprivation of constitutional rights or injury.

Petitioner contends that the qualified immunity test with its duty to know settled rights should have been applied by the District Court and Court of Appeals to Respondents Orleans Parish School Board members and other school officials in this case.

The Court of Appeals in affirming the District Court's decision failed to recognize that the firing was not feasible even if Petitioner had been deemed unsatisfactory, and it was ultimately intentional and a reckless disregard for Petitioner's constitutional rights. (See Appendix 52a.)

The settled rights part of the qualified immunity test in this case was applied in a subjective and biased manner in Defendants' favor by the District Court and affirmed as a matter of law by the Court of Appeals. The Fifth Circuit failed to

recognize at the time the Board decision was made there had in fact been adjudication binding on the Board that its unlawful discharge policy for teachers was unconstitutional. (See Monell v. Department of Social Studies, 436 U.S. 658 (1978)). The Fifth Circuit inexplicable ignored this Court's decisions on point concerning procedural due process due to terminated school district employees in Cleveland Board of Education v. Loudermill, 105 S.Ct. 1487 (1985); the preclusive effect of state court judgment in Migra v. Warren City School District Board of Education, 465 U.S. 75 (1984); and, finally, when the teacher is entitled to a hearing in this Court's precedential decisions in Perry v. Sindermann, 408 U.S. 593 (1972) and Board of Regents v. Roth, 408 U.S. 564 (1972).

This Court went on to hold in Harlow v. Fitzgerald that reliance on the objec-

tive reasonableness of an official's conduct, as measured by reference to clearly established law, should avail excessive disruption of government and permit the resolution of many unsubstantial claim summary judgments.

The Fifth Circuit ignored the case on point established by this Court's decision at the time of the deprivation by Respondents in Board of Regents v. Roth, 408 U.S. 564 (1972) when a teacher is entitled to a hearing. In preserving the wrongdoers the right to prevail in this case, the Court of Appeals used its own standard, Again, without citing any authority for using its own standard, the Court of Appeals implicitly followed prior decisions in the Circuit. See Jones v. Jefferson Parish School Board, 533 F. Supp. 816, 822 (E.D. La.), aff'd. 688 F.2d 837 (5th Cir. 1982), cert. denied, 460 U.S. 1064 (1983) holding

such a suspension without pay, prior to a hearing by the School Board, is not a violation of due process. See Perry v. Sindermann and Board of Regents v. Roth.

After Wood the reasonable grounds part of the qualified immunity test requires a finding as to whether the Defendant school board members should have known that the challenged conduct in connection with the 1977 Louisiana Teacher Accountability Statute 17:391.5 was violating Petitioner's constitutional rights in violation of those provisions of the Bill of Rights which are incorporated by the Due Process Clause of the Fourteenth Amendment and made applicable to the states. See LSA- R.S. 17:462, 443; 42 U.S.C. §1983; U.S.C.A. Const. Amend. 14; and L.S.A.-R.S. 17:391.5.

Where the relevant rights are "settled," then a duty to know these

rights arises. Petitioner contends the known, settled, constitutional law was breached by Respondents herein. Respondents failed and breached their objective part of the qualified immunity test.

As this Court has already noted in Harlow v. Fitzgerald, Justice Brennan, with whom Justices Marshall and Blackmun joined, concurred that:

> "Summary judgment will be readily available to public official defendants whenever the state of the law was so ambiguous at the time of the alleged violation that it could not have been known then, and thus liability could not ensue. In my view, summary judgment will also be readily available whenever the Plaintiff cannot prove, as a threshold matter, that a violation of his constitutional rights actually occurred. I see no reason why discovery of the Defendants' knowledge should not be deferred by the trial judge pending a decision of any motion of Defendant for summary judgment on grounds such as these."

II

The Fifth Circuit Court of Appeals Erred in misapplying this Court's decision in McDonald v. City of West Branch, 466 U.S. 284 (1984) in fashioning a §1738 federal preclusion rule barring the Petitioner's state action claim arising under the Due Process Clause of the Fourteenth Amendment and §1983 by affirming the District Court's judgment in dismissing Petitioner's §1983 claim and holding:

"We have already held that the administrative scheme provided for termination of tenured Louisiana teachers affords adequate protection of the constitutional rights to due process."

Somewhat more guidance was provided by McDonald v. City of West Branch when this court reversed in a unanimous opinion by Justice Brennan. At the outset this court asserted that §1738 applied only to judicial proceedings and not to the arbitration proceedings involved here. Thus a state preclusion law was irrelevant. Further, The Sixth Circuit erred in fashioning a federal preclusion rule bar-

ring the Plaintiff's claim in this case because, according to this court, giving preclusive effect to an arbitration award in a subsequent §1983 action would undermine the efficacy of §1983 in protecting federal rights. Four reasons were given by this court:

> "First--An arbitrator may not have the necessary expertise to resolve complex §1983 issues:
>
> "Second--An arbitrator may not have the authority under the collective bargaining agreement to enforce §1983;
>
> "Third--The union's interest and that of the affected employee do not always coincide; and
>
> "Fourth--Finally, arbitral factfinding is generally not equivalent to judicial factfinding."

This Court concluded:

> "We therefore hold that in a §1983 action, a federal court should not afford res judicata or collateral estoppel effect to an award in an arbitration proceeding brought pursuant to the term of collective bargaining agreement."

McDonald's result is sound and followed from analogous Supreme Court precedent. See E. G. Alexander v. Gardner--Denver Co. 415 U.S. 36 (1974), a Title VII action, and Barrentine v. Arkansas-Best-Freight Sys. Inc., 450 U.S. 728 (1981), a Fair Labor Standards Act action.

Two matters are noteworthy, however. First, this Court observed in McDonald, 466 U.S. at 292, N. 13, that an arbitration decision may be admitted as evidence in §1983 cases, especially where the sole issue is one of fact decided by the arbitrator after presentation by the parties and on the basis of an adequate record. Second, McDonald strongly indicated, if only implicitly, that 28 USC §1738 does not in §1983 cases mandate the application of state preclusion rules to prior state agency proceedings. Like arbitration proceedings, this Court went on to state:

> "Such agency proceedings, standing alone, should not be considered judicial proceedings for §1738 preclusion effect purposes."

See this court decision in University of Tennessee v. Elliott, 106 S.Ct. on the 3220 (1986), aff'g. in part and revg. in part, 766 F.2d 982 (6th Circuit 1985) 106 S.Ct. at 3227 on the preclusion issue. See Appendix 33a, 35a, and 39a.

In Petitioner's case, Louisiana Teacher Tenure Laws and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution require that before a tenured teacher can be "removed from office," there must be a school board hearing. Numerous courts have interpreted the phrase "removed from office" to include suspension without pay and a notice of written valid charges. See Rosenthal v. Orleans Parish School Board, 214 So.2d 203 (La. App. 1968); Tate v. Livingston Parish

School Board, 391 So.2d 1240, appealed after remand 444 So.2d 219, writ denied 446 So.2d 314 La. App. 1980; and Teachers Tenure Provisions of Louisiana of 1950, Title 17, Sections 462 and 443. See Appendix 45a and 47a.

Petitioner contends strongly that her unconstitutional suspension without pay and suspension without written notice of valid charges was imposed by the Orleans Parish School Board acting through its union arbitrator, Frank Fudesco, in a res judicata arbitration proceeding held on August 10, 1987, pursuant to the term of the collective bargaining agreement with the United Teachers of New Orleans. Petitioner can locate no authority which grants the Board's union arbitrator, Dr. Frank Fudesco, the right to grant the procedural due process claim. See Appendix 33a, 35a, and 39a.

The school board union arbitrator's dismissal conference was not a state agency administrative proceeding characterized as quasi-judicial in nature for §1738 preclusive effect purposes.

Further, the school board union arbitrator's decision was not of a judicial forum. Moore requested a public tenure hearing before August 27, 1987, to refute the negative recommendations, but the administration put it off until April 20, 1988, after which the discharge was upheld.

III

The Fifth Circuit misapplied this court's decision in Logan v. Zimmerman Brush Co., 455 U.S. 422, 435-36 (1982) concerning the federal doctrine of exhaustion of administrative remedy in affirming the District court's judgment in granting the motion to dismiss Petitioner's state action claim and §1983 under Parratt/Hudson pursuant to Rule 12 (b)(6) FRCP and by holding:

"This is all that due process re-

quires where the state has provided an adequate post-termination damage remedy."

It is inappropriate to apply Parratt/Hudson for violations of those provisions of the Bill of Rights which are incorporated by the Due Process Clause of the Fourteenth Amendment and made applicable to the states; the challenge here is to the conduct itself and not to the absence of a hearing. See Logan v. Zimmerman.

Petitioner contends if Respondents are asking whether a post-deprivation remedy is available, this is clearly improper. A hearing based on LSA-R.S. 17: 391.5 was not feasible for the 1986-87 school term. Petitioner went to court to challenge the unlawful actions of the Orleans Parish School Board in discharging her from employment under color of state law in connection with Act 9 of the 1977 Louisiana Teacher Accountability Statute,

L.S.A.-R.S. 17:391.5.

A. The Logan v. Zimmerman Brush Co. Decision

In Logan v. Zimmerman Brush Co., 455 U.S. 422, 435-36 (1982), this Court indicated that the narrow reading of Parratt's due process was what the Court intended. The Court found support for the narrow reading of Parratt's due process holding in Logan v. Zimmerman Brush Co. Here this Court held that Parratt was inapplicable to a case where a state system by operation of law destroyed a property interest through failure to convene a timely conference to consider a person's claim of an unfair employment practice. This Court emphasized that it did not matter whether the state's failure to convene the timely conference was negligent, malicious, or otherwise; Parratt was not designed to reach such a situation as in Petitioner's case.

Only where the challenged conduct is random and unauthorized and is not engaged in pursuant to an established state procedure will a Parratt post-deprivation remedy be made. See E. G. Stana v. School District, 775 F.2d 122 (3d Cir. 1985).

B. The Parratt v. Taylor Decision

This court decision in Parratt v. Taylor, 451 U.S. 527 (1981) was designed to clear up confusion regarding the §1983 basis of liability by holding that there is no independent state of mind requirement for the §1983 prima facie case.

In Parratt, this Court held that the due process clause is implicated where a a state official negligently causes a property loss under color of law. Read narrowly, Parratt's due process holding applied only to negligent deprivation of property and procedural due process.

Applying Parratt and agreeing with

The Fourth Circuit in this respect, this Court could find no logical distinction between negligent and intentional deprivation of property respecting the practicability of providing predeprivation process. The state can no more anticipate conduct of its employees than it can anticipate similar negligent conduct. See Hudson v. Palmer, 104 S.Ct. 3194 (1984) 3203, 3208.

Petitioner contends a negligent and unauthorized intentional act of the principal and social studies supervisor could not have deprived her of liberty interest (damage to reputation) and constitutionally protected "property" interest in her continued employment. (See Appendix 19a, 21a, 23a, and 25a.)

This Court reasoned in Daniels v. Williams, 106 S.Ct. 602 (1986) that the Due Process Clause requires for its

violation some abuse of governmental power, and negligent conduct does not constitute such an abuse of power. Petitioner contends Daniels' law is sound.

Petitioner herein was not permitted to continue in the remediation program during the 1987-88 school year. Based upon the observations and evaluations of principal and social studies supervisor during the 1986-87 school year, Petitioner's principal recommended her dismissal from the New Orleans Public School System on that basis.

Petitioner did not pursue her administrative state remedy. See McNeese v. Board of Education, 373 U.S. 668 (1963); Steffel v. Thomas, 415 U.S. 452, 472-73 (1974); Patsy v. Fla. Bd. of Regents, 457 U.S. 496 (1982) revg. 634 F.2d 900 (5th Circuit 1981) en banc; and Monroe v. Pape, 365 U.S. at 183 (1961).

Following this Court's lead in Monroe v. Pape, the circuits all adhere to the no-exhaustion rule in connection with state judicial remedies.

C. Distinction Between Logan v. Zimmerman and Hudson v. Palmer

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) was distinguished because there, unlike Hudson v. Palmer, 468 U.S. 527 (1984), the property deprivation was effected pursuant to an established state procedure. Hence, because a meaningful post-deprivation state remedy was available to the Plaintiff under Virginia law, there was no violation of procedural due process. It follows from the Court's pre-Parratt decision in Ingraham v. Wright, 430 U.S. 651 (1977) that the Court must ask the question of whether a predeprivation hearing was feasible or possible. Only if the answer is negative should

the post-deprivation state remedy be resorted to.

This Court in Cleveland Board of Education v. Loudermill, 105 S.Ct., 1487 (1985) implicitly makes clear that a Parratt inquiry into adequate state post-deprivation remedies is only undertaken when a pre-deprivation hearing is impractical or not feasible. That is, this Parratt inquiry is not automatic whenever there has been a deprivation of life, liberty, or property in a procedural setting.

IV

The Court of Appeals erred in this Court's decision in Daniel v. Williams, in dismissing Petitioner's state action claim arising under the Due Process Clause of the Fourteenth

Amendment and 42 U.S.C. §1983 by affirming the District Court judgment and holding "negligent, intentional conduct is sufficient for a procedural Due Process violation of liberty and claimed deprivation of property."

A. Due Process Holding of Daniels v. Williams

This Court in Daniels v. Williams, 106 S.Ct. 662 (1986) recently examined the due process holding of Parratt and modified it to the extent of ruling that negligent conduct is insufficient for a procedural due process violation invoking a claimed deprivation of property. The Court went on even further in Daniels and held that more than negligence is required for all due process violations.

This Court reasoned that the Due Process Clause requires for its violation some abuse of governmental power, and negligent conduct does not constitute such an abuse of power. The Court went on to state that negligent conduct cannot bring

about a deprivation of liberty. Also in this respect overruling one of the Parratt holdings, the Court went on to hold that the same is true for deprivations of property: more than negligent conduct is required to bring about a deprivation of property.

B. Daniels' and Davidson's Effect on the Due Process Clause

As in Daniels, Davidson v. Cannon, 106 S.Ct. 668 (1986) raised a related due process issue; the Court in an opinion by Chief Justice Rehnquist affirmed Daniels on a different ground: that negligence is not enough for deprivations of liberty. The Court reasoned that the Due Process Clause requires for its violation some abuse of governmental power, and negligent conduct does not constitute such as abuse of power. In short, as a matter of due process interpretation, negligent conduct cannot bring about a deprivation of

liberty. Also in this respect overruling one of the Parratt holdings, this Court went on to hold that the same is true of deprivation of property: More that negligent conduct is required to bring about a deprivation of property.

Justice Blackman dissented in Davidson. While he did not dispute the soundness of the Daniels standard, he went on reach the inadequacy of the state remedy issue and determined that a state tort remedy is inadequate where the potential state tort defendants are protected by "absolute immunity." (See Wood v. Strickland.)

The unlawful suspension without written charges and pay was an abuse of governmental power in connection with Act 9 of the 1977 Louisiana Teacher Accountability Statute 17:391.5.

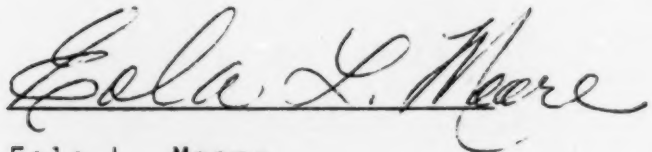
Indeed, Petitioner's due process rights to a formal pretermination or prompt post-termination hearing was clearly established on August 27, 1987, when she was discharged by the Board's widely known, unconstitutional custom. (See Appendix 55a.).

There was no rational basis for Petitioner's discharge on August 27, 1987. The challenge here is Respondents' conduct irrespective of a hearing.

CONCLUSION

The issues presented in this case are of great significance with respect to the preclusive effect of prior §1983 federal civil proceedings, federal issues of law and this Court's new approach to due process as demonstrated by Daniels and Davidson based on the Due Process Clause of the Fourteenth Amendment and §1983 governing future decisions in this and other circuits. Petitioner asks this Court to grant the petition and to reverse the judgment of failure to state a claim on which relief can be granted for the reason stated herein.

Respectfully submitted,



Eola L. Moore
3601 Havana Street
New Orleans, LA 70122
(504) 283-5756
pro se

APPENDIX

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

EOLA MOORE	CIVIL ACTION
VERSUS	NO. 87-5641
ORLEANS PARISH SCHOOL	SECTOPM "F"
BOARD ET AL.	LORETTA G. WHYTE CLERK

FILED: May 19, 1988

JUDGMENT

For the written reasons of the Court on file herein, accordingly;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Orleans Parish School Board, Carol Chance, Individually and in her official capacity as Principal of Rabouin Vocational School, Frank Fudesco, Individually and in his official capacity as Employee Relations Officer with Orleans Parish School Board, Everett J. Williams, Individually and in his official capacity as Superintendent of the Orleans Parish School

System, Johnny Jones, Individually and in his official capacity as Supervisor of Social Studies and Cynthia Caliste, Individually and in her official capacity as Interim Superintendent of Secondary Schools of the Orleans Parish School Board, and against plaintiff, Eola Moore, dismissing plaintiff's suit with costs.

New Orleans, Louisiana, this 18th day of May, 1988.

UNITED STATES DISTRICT JUDGE

DATE OF ENTRY: May 19, 1988

MINUTE ENTRY
FELDMAN, J.
MAY 16, 1988

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

EOLA MOORE	CIVIL ACTION
VERSUS	NO. 87-5641
ORLEANS PARISH SCHOOL	SECTION "F"
BOARD, ET AL.	LORETTA G. WHYTE DEPUTY CLERK

FILED: May 17, 1988

IT IS ORDERED:

On May 5, 1988, noting that the plaintiff had failed to file a memorandum in opposition to the defendants' motion to dismiss in a timely manner, this Court granted the defendants' motion to dismiss this action. Subsequently, on May 9, 1988, the plaintiff filed a document labeled, "Motion to Oppose to Dismiss Pursuant to Rule 12(b)(6) FRCP." On account of plaintiff's pro se status, the Court will consider her May 9, 1988 filing to be

a motion to reconsider the Court's May 5 Order. Having considered the plaintiff's papers, her motion to reconsider the Court's Order is DENIED. The May 5, 1988 Order shall remian in full force and effect.

The plaintiff, Eola Moore, was a tenured teacher in the Orleans Parish School system. She alleges that she was dismissed from her teaching position in a manner that was in violation of her due process rights under the Fourteenth Amendment and Section 1983 of Title 42 of the United States Code. Moore was administratively suspended from her teaching position on September 11, 1987. By a letter of that date, Frank Fudesco, the Employee Relations Director for the school system informed Moore that she was being suspended because of an "unsatisfactory" evaluation of her job performance. A

hearing before the school board was scheduled for December 16, 1987. At the request of Moore's former counsel, that hearing was rescheduled for March 1-2, 1988. Subsequently, Moore retained new counsel, and that counsel once again requested that the hearing before the school board be rescheduled. Moore's second counsel has also resigned from the case. The school board hearing was finally held on April 20, 1988. Moore did not appear at the hearing, and the board removed her from her teaching position.

A Section 1983 claim for deprivation of rights will not lie where there is an adequate state-provided remedy. Franceski v. Plaquemines Parish School Board, 602 F. Supp. 691, 694 (E.D. La.), aff'd 772 F.2d 197 (5th Cir. 1985) (citing Parrat v. Taylor, 451 U.S. 527 (1981)). The administrative scheme provided for the

termination of tenured Louisiana teachers is such an adequate remedy. See Franceski 602 F. Supp. at 594.[1] Any claim that the defendants have failed to comply with the statutory scheme is a matter for state law.

Furthermore, Moore complains that her suspension prior to the April 20-21 school board hearing constituted a violation of her due process rights. Such a suspension without pay, prior to a timely hearing by the school board, is not a violation of a tenured teacher's rights. Jones v. Jefferson Parish School Board. 533 F. Supp. 816, 822 (E.D. La. 1982), aff'd, 688 F.2d 837 (5th Cir.), cert. denied, 460 U.S. 1064 (1983). Moore has not suggested

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[1] Franceski dealt with the constitutional sufficiency of Sections 441 through 445 of Title 17 of the Revised Statutes, La. Rev. Stat. Ann. 17:441-445 (West 1982), which provide the procedure for the

that the April 20, 1988 hearing was untimely. Indeed, any delay in scheduling the hearing was brought about by counsel acting for the plaintiff.

Accordingly, for the foregoing reasons, plaintiff's motion to reconsider the Court's May 5, 1988 Order dismissing her action is DENIED. The May 5 Order shall remain in full force and effect.

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removal of Louisiana Teachers in General. In this case, the Court assumes that Moore, an Orleans Parish teacher, was removed pursuant to Section 462, La. Rev. Stat. Ann. 17:463 (West 1982), which provides specific removal procedures for teachers in Orleans Parish. Moore has not suggested that the Franceski holding would not apply to removal under Section 463, and this Court can conceive of no reason why it would not.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 88-3419
Summary Calendar

EOLA MOORE,

Plaintiff, Appellant,

versus

ORLEANS PARISH SCHOOL BOARD, ET AL.,

Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana
(87-5641-F (3))

(March 22, 1989)

Before GEE, WILLIAMS, AND HIGGINBOTHAM, CIRCUIT JUDGES. PER CURIAM:*/

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*/ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule,

Appellant Eola Moore filed a complaint against the Orleans Parish School Board and various school officials claiming that termination of her employment as a tenured school teacher violated her right to due process. Because the district court dismissed the suit under Fed. R. Civ. P. 12 (b)(6), the following facts, which are taken from Moore's complaint, are assumed to be true for the purpose of review.

Moore had been employed as a tenured school teacher in the Orleans Parish School System for approximately twenty years. In the 1986-87 school year, Moore was transferred to Rabouin Vocational School where she was observed and evaluated by defendant Dr. Carol Chance, the principal of Rabouin. Dr. Chance found Moore's classroom performance to be un-

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the court has determined that this opinion should not be published.

satisfactory and recommended that Moore be terminated because of incompetence. Moore then received notice that a dismissal conference would be held on August 10, 1987. The notice informed Moore that she would be given an opportunity to discuss her case and to have legal or union representation present. Moore did attend the conference.

Moore was not advised of the outcome of the proceeding prior to August 27, the first day of school, when she was told that Dr. Fudesco had suspended her without pay for the period of August 27 to November 1. On August 28, Moore received a notice from defendant Cossette West, Interim Coordinator of Personnel, confirming the suspension.

Moore then received a letter from Dr. Fudesco upholding the dismissal recommendation and advising her that she was on

suspension without pay until a hearing with the school board could be conducted. The defendant Everett J. Williams, the superintendent of schools, formally charged Moore with incompetency and willful neglect of duty in Nov. 1987. Additionally, the school board confirmed the suspenpension and informed Moore that a hearing would be held on December 16, 1987.

The removal of tenured teachers in the New Orleans Parish School System is governed by La. Rev. Stat. Ann. sec. 17: 462 (West 1982) which provides in part:

> A permanent teacher shall not be removed from office except on written and signed charges of . . . wilful neglect of duty, or of incompetency . . . and then only if found guilty after a hearing by the Orleans Parish School Board, which hearing may be private or public, at the option of the teacher. . . .
>
> The teacher shall have the right to appear before the board with witnesses in his behalf and with counsel of selection all of whom shall be heard by the board at the said hearing.

On December 7, 1987, Moore filed this action pro se. The defendants filed a motion to dismiss for failure to state a claim. The court granted the motion as unopposed. Three days later, Moore filed an opposition to the defendant's motion to dismiss. The district court, considering Moore's pro se status, treated the motion as one for reconsideration of his dismissal order. The court denied the motion and entered judgment dismissing Moore's suit. Moore timely appeals from that judgment.

Discussion

A dismissal for failure to state a claim upon which relief can be granted will be upheld if, taking the plaintiff's allegations as true and viewing them in the light most favorable to her, it appears that the plaintiff can prove no set of facts in support of her claim

which would entitle her to relief. Rankin v. City of Wichita Falls, 762 F.2d 444, 446 (5th Cir. 1985). Under this standard, it is apparennt from the fact of Moore's complaint that she has failed to state a federal claim.

As a tenured teacher, Moore had a constitutionally protected property interest in her continued employment. See Franceski v. Plaquemines Parish School Board, 772 F.2d 197, 199 (5th Cir. 1985) (citing Bishop v. Wood, 426 U.S. 341, 345, 96 S.Ct. 2074, 48 L.Ed.2d 684 (1976)).

We have already held that the administrative scheme provided for termination of tenured Louisiana teachers affords adequate protection of the constitutional right to due process. Franceski, 772 F.2d at 199-200. Thus, to the extent that Moore is challenging the adequacy of those procedures, she fails

to state a claim. Moore does not contend that she did not receive notice of a tenure hearing before the school board as provided under the statute, nor does she contend that she was d enied the opportunity to participate fully in the hearing with all the rights provided in the statute. No due process violation is thus present.

The gravamen of Moore's complaint is that the defendants violated her due process rights by suspending her without pay prior to the termination hearing. This argument fails to state a claim because such a suspension without pay, prior to a hearing by the school board, is not a violation of due process. Jones v. Jefferson Parish School Board, 533 F. Supp. 816, 822 (E.D. La.), aff'd 688 F. 2d 837 (5th Cir. 1982), cert. denied, 460 U.S. 1064 (1983). Moore was informed

of the nature of the action proposed to be taken against her, and she was given an opportunity to present her side of the story.[1/] This is all that due process requires where the state has provided an adequate post-termination damage remedy. Cleveland Board of Education v. Loudermill, 470 U.S. 532, 545-56, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985); Schaper v. City of Huntsville, 813 F.2d 709, 714 (5th Cir. 1987). The decision of the trial court is thus

AFFIRMED.

[1/] We do pause to note that the Orleans Parish School Board was apparently satisfied with Ms. Moore's performance for some twenty years before taking action. What courts of events may have precipitated a change in her evaluations we do not venture to guess, nor do we hold any warrant to interfere in such matters as this on compassionate grounds.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 88-3419

EOLA MOORE,

Plaintiff-Appellant,

versus

ORLEANS PARISH SCHOOL BOARD, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana

ON PETITION FOR REHEARING

(April 26, 1989)

Before GEE, WILLIAMS and HIGGENBOTHAM, Circuit Judges.

PUR CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

_____

United States Circuit Judge

CLERK'S NOTE:

SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.

REHG-4

U.S. COURT OF APPEALS

FILED

APRIL 26, 1989

GILBERT E. GANUCHEAU

CLERK

NEW ORLEANS PUBLIC SCHOOLS
OBSERVATION FORM FOR TEACHING PERSONNEL
FOR REGULAR CLASSROOM, OPEN CLASSROOM
AND FEDERAL RESOURCE TEACHERS

Teacher Ms. Eola Moore

School L. E. Rabouin

Grade/Subject 9th /Civics

Title Principal

Observation Time: From 12:53 to 1:33

Observation Date: 2/5/87

Please refer to the Standards of Performance before completing the Observation Form. Mark (X) on the line under S if there is evidence of the stated performance. To receive S on a line item, competence must be evident in all behavioral indicators with the asterisk (*) on the Standards of Performance. Mark (X) on the line under NI if the stated performance needs to be strengthened or if any asterisked behavioral indicators are evident or if the stated performance is clearly unsatisfactory. For any item

marked NI or U, you should justify the rating by listing the specific area(s) of weakness. Positive or negative observations may be made in the lines provided. Make sure Signature of Evaluatee and Date of Receipt of Observation Form is complete.

S = Satisfactory NI = Needs Improvement
U = Unsatisfactory

S	NI	U	
	X		A. PROFESSIONAL COMPETENCIES
			1. Knowledge and understanding of subject matter.
			_____
			_____
			_____
	X		2. Ability to organize classroom for learning.
	X		3. Effectiveness of interaction between teacher and students
	X		4. Effectiveness of teaching techniques
X			5. Competencies in evaluation of student, planning and recordkeeping

S	NI	U	
X			B. PERSONAL QUALITIES
X			1. Shows poise, self-control and maturity
X			2. Shows skill in the use of oral and written English
X			3. Shows initiative, resourcefulness and industry
X			4. Exhibits appropriateness of dress and grooming
X			5. Appears to be in good health
X			C. TEACHER-PARENT INTERACTION
X			D. ADHERENCE TO OUT-OF-CLASS RESPONSIBILITIES
N/A			E. EFFICIENT USE OF PROFESSIONAL STAFF

GENERAL COMMENTS:

EVALUEE COMMENTS:

C. CHANCE 2/2/87
SIGNATURE OF OBSERVER DATE

EOLA MOORE
SIGNATURE OF EVALUEE DATE

NEW ORLEANS PUBLIC SCHOOLS
OBSERVATION FORM FOR TEACHING PERSONNEL
FOR REGULAR CLASSROOM, OPEN CLASSROOM
AND FEDERAL RESOURCE TEACHERS

Teacher Eola Moore

School L. E. Rabouin

Grade/Subject 9th Civics

Observer Carol Chance

Title Principal

Observation Time: From 2:27 to 3:10

Date: 3/23/87

S = Satisfactory NI = Needs Improvement

U = Unsatisfactory

S	NI	U	A. PROFESSIONAL COMPETENCIES
___	X	___	1. Knowledge and understanding of subject matter
___	X	___	2. Ability to organize the classroom for learning
___	X	___	3. Effectiveness of interaction between teacher and students
___	___	X	4. Effectiveness of teaching techniques

S	NI	U	
___	X	___	5. Competancies in evaluation of student, planning and recordkeeping
			B. PERSONAL QUALITIES
___	X	___	1. Shows poise, self-control and maturity
X	___	___	2. Shows skill in the of oral & written English
___	X	___	3. Shows initiative, resourcefulness & industry
X	___	___	4. Exhibits appropriateness of dress and grooming
X	___	___	5. Appears to be in good health
X	___	___	C. TEACHER-PARENT INTERACTION
X	___	___	D. ADHERENCE TO OUT-OF-CLASS RESPONSIBILITIES
N/A		___	E. EFFICIENT USE OF PARA-PROFESSIONAL STAFF

GENERAL COMMENTS:

EVALUEE COMMENTS:

Carol Chance 3/26/87
SIGNATURE OF OBSERVER DATE

Eola L. Moore
SIGNATURE OF EVALUEE

NEW ORLEANS PUBLIC SCHOOLS
OBSERVATION FORM FOR TEACHING PERSONNEL FOR REGULAR CLASSROOM, OPEN CLASSROOM AND FEDERAL RESOURCE TEACHERS

Teacher Eola Moore

School L. E. Rabouin

Grade/Subject: 9th Civics

Observer Carol Chance

Title Principal

Observation Time: From 9:40 to 10:23

Date: 4/9/76

S = Satisfactory NI = Needs Improvement

U = Unsatisfactory

S	NI	U	A. PROFESSIONAL COMPETENCIES
X			1. Knowledge and understanding of subject matter
	X		2. Ability to organize the classroom for learning
	X		3. Effectiveness of interaction between teacher and students
		X	4. Effectiveness of teaching techniques

S	NI	U	
		X	5. Competancies in evaluation of student, planing and recordkeeping
			B. PERSONAL QUALITIES
	X		1. Shows poise, self-control and maturity
X			2. Shows skill in use of oral and written English
X			3. Shows initiative, resourcefulness and industry
X			4. Exhibits appropriateness of dress and grooming
X			5. Appears to be in good health
X			C. TEACHER-PARENT INTERACTION
X			D. ADHERENCE TO OUT-OF-CLASS RESPONSIBILITIES
	N/A		E. EFFICIENT USE OF PARAPRO-PROFESSIONAL STAFF

GENERAL COMMENTS:

EVALUEE COMMENTS:

Carol Chance 4/10/87
SIGNATURE OF OBSERVER DATE

Eola Moore 4/10/87
SIGNATURE OF EVALUEE

NEW ORLEANS PUBLIC SCHOOLS
5031 Milne Boulevard
New Orleans, Louisiana 70124

Everett J. Williams
Superintendent

March 6, 1987

Dr. Carol Chance

Rabouin Vocational School

727 Carondelet Street

New Orleans, LA

Dear Dr. Chance:

Pursuant to your request, dated December 3, 1986, that I offer assistance to Mrs. Eola Moore of your staff via observation of her classroom teaching performance and conference, this will acknowledge progress of the same.

I observed Mrs. Moore on three different dates: December 16, 1986, January 7, 1987, and January 29, 1987. My observation on December 16, 1986 and January 29, 1987 were without her knowledge of the date and time. However, she was informed

at least three (3) weeks in advance of my observation visit on January 7, 1987. Upon completion of those observation visits, a post-observation conference was held with Mrs. Moore in my office on Feb. 25, 1987. At that time I shared with her the following recommendations; that:

1. much more research and reflection be evidenced for topics taught;
2. teaching style and strategy be changed to be more student activity oriented;
3. perhaps a smaller room (in size) assignment would be feasible for increasing control of the students.
4. a new seating arrangement be initiated;
5. greater emphasis be placed on classroom attractiveness, e.g., bulletin boards and other display areas be regularly maintained; and

6. a personal improvement objective for staff development in social studies be accomplished vio in-school observations and out-of-school visitations and observations.

At the conclusion of the post-observation conference, Mrs. Moore implied that she appreciated the time we took to examine what she had been doing in the classroom. She appeared to be willing to make adjustments and I suggested she conference with you as soon as it was convenient for the both of you.

If you require any further information or assistance from me, please do not hesitate to let me know.

Sincerely,

John A. Jones, Jr.
Instructional Specialist
for Social Studies(K-12)
JAJ,jr.:lv

cc:
Mrs. L. Stelly
Dr. N. Roussell
Mrs. Eola Moore

Civics 1986-87

Letter from Student

Factual Evidence

The things that I learned in this room really helped me on my ACT test. Social Studies is one of my best subjects. Mrs. Moore made me read the newspapers and I kept up on current events. I received a 28 which puts me in the 92% percentile rank. Only 8% of the students nationally did better than I did on the ACT test.

José Postelleo

NEW ORLEANS PUBLIC SCHOOLS
1815 St. Claude Avenue
New Orleans, Louisiana 70116

Everett J. Williams
Superintendent

Cynthia S. Caliste
Interim, Assoc. Superintendent
Area III
(504) 949-0802

May 20, 1987

Mrs. Eola Moore
Civics Teacher
Rabouin Vocational School
New Orleans, LA

Dear Mrs. Moore:

In response to your written request, a conference was held in the Area III Office on May 19, 1987. Present at the conference were Dr. Carol Chance, Principal of Rabouin Senior High School, Mrs. Connie Goodly, UTNO Representative, you and I.

Your grievance was filed to protest the results of your recent evaluation which was completed by Dr. Chance. During the

conference, you agreed that the evaluation was procedurally correct.

This is to confirm my judgement reached as a result of our conference. There were no violations of any articles in the UTNO agreement. No procedural errors in evaluation process were noted so the results of your evaluation will stand. You were advised of my ruling at the conference.

Sincerely,

(Mrs.) Cynthia S. Caliste

Interim Associate Superintendent

cc:

Dr. Carol Chance

Mrs. Connie Goodly

Dr. Frank Fudesco

NEW ORLEANS PUBLIC SCHOOLS
4100 TOURO STREET
New Orleans, Louisiana 70122

Everett J. Williams
Superintendent

May 27, 1987

(Breached contract on August 27, 1987)

Ecla L. Moore
3601 Havana St.
New Orleans, LA 70122

E.M.

Dear Employee:

Based upon the official action of the Orleans Parish School Board at its meeting on May 25, 1987, I am writing to notify you of your continued employment for the fall semester of the 1987-88 school year. This is to further advise you that your employment status will not be interrupted by vacations or holidays which may occur during the year.

This notification is not meant to replace an annual appointment letter which would state your assignment and/or salary, rather, it is intended to give you assurance of your employment for the

next school year as envisioned by Act 745 of 1977.

Should any unforeseen circumstances develop which would affect your continued employment, you will be notified immediately.

Sincerely,

Everett J. Williams
Superintendent

EJW:pen

NEW ORLEANS PUBLIC SCHOOLS
4100 Touro Street
New Orleans, Louisiana 70122

Everett J. Williams
Superintendent

June 4, 1987

Ms. Eola Moore
3601 Havana Street
New Orleans, Louisiana 70122

RE: Dismissal Conference/Unacceptable Performance Evaluation Report

Dear Mrs. Moore:

This letter is to advise you that I am in receipt of a copy of your unacceptable performance evaluation report.

I have, therefore, scheduled a conference on Monday, July 6, 1987, at 9:00 a.m., in room 270 of the Administrative Center, 4100 Touro Street.

You are directed to attend this conference. During this conference, you will be given an opportunity to discuss your case and to have legal and/or Union representation present, if desired. The proceedings will be recorded.

Respectfully,

Frank D. Fudesco

Employee Relations
Officer

FDF/csp

cc: Mrs. Cynthia Caliste

Dr. Carol Chance

Mrs. Janice Mullins

United Teachers of New Orleans

NEW ORLEANS PUBLIC SCHOOLS
4200 Touro Street
New Orleans, Louisiana 70122

Everett J. Williams
Superintendent

July 9, 1987

Ms. Eola Moore
3601 Havana Street
New Orleans, Louisiana 70122

RE: Dismissal Conference/Unacceptable Performance Evaluation Report

Dear Ms. Moore:

This letter is to advise you that I am in receipt of a copy of your unacceptable performance evaluation report.

I have, therefore, re-scheduled a conference on Monday, August 10, 1987, at 9:00 a.m., in room 270 of the Administrative Center, 4100 Touro Street.

You are directed to attend this conference. During this conference, you will be given an opportunity to discuss your case and to have legal and/or Union representation present, if desired. The

proceedings will be recorded.

Respectfully,

Frank D. Fudesco

Employee Relations
Officer

FDF/fld

cc: Mr. John Smith

Dr. Carol Chance

Mrs. Janice Mullins

United Teachers of New Orleans

Mr. Larry Samuel

3601 Havana St.
New Orleans, La. 70122
August 27, 1987

Dr. Carol Chance
Rabouin Vocational School
Orleans Parish School System
New Orleans, La. 70130

Dear Dr. Chance,

When When I arrived for work this morning, your secretary, Romona, informed me that I have been placed on a suspension without pay from my employment with the Orleans Parish School System. She stated that the suspension was to last until November 1987.

Would you please provide me the following in writing. Who authorized my suspension without pay?

Please provide this information in writing as soon as possible. My attorney needs it.

Sincerely yours,

Eola Moore
Educator

cc: Larry Samuel
Dr. F. Fudesco
UTNO C. Goodly

NEW ORLEANS PUBLIC SCHOOL

Notice of Personnel Action

Mrs. Eola L. Moore

3601 Havana St.

New Orleans, LA 70122

Social Security NO.: 438-62-6858-1

Action Effective Date: 08/27/87

Type of Action: Leave of Absence

School or Dept.: 85812 Rabouin Voc. High

Work Location: 512 Rabouin Voc. High

Status: 1-Regular

Job Class.: 904-Secondary teacher

Type Leave: 62-Suspension-Not Paid

Starting and ending Date: 08/27/87-11/01/87

Approved by Cosette West
08/21/87

Date 08/27/87

NEW ORLEANS PUBLIC SCHOOLS
4100 Touro Street
New Orleans, Louisiana 70122

Everett J. Williams
Superintendent

September 11, 1987

(Note: This letter was received on September 24, 1987--Eola Moore.)

Mrs. Eola Moore
3501 Havana Street
New Orleans, Louisiana 70122

RE: Evaluation Hearing

Dear Ms. Moore:

In accordance with adopted Personnel Evaluation Procedures, an evaluation hearing was convened on August 10, 1987 as a result of an "unsatisfactory" overall Performance Evaluation Report rating you received at the close of the 1986-87 school session. Present during the hearing were Ms. Connie Goodly, UTNO Representative, Mr. Larry Samuel, UTNO Attorney, Mrs. Janice Mullins, Evaluation Supervisor, Dr. Carol Chance, Principal,

Rabouin Vocational High School, you and I.

I personally apologize, Ms. Moore, for the lengthy delay in forwarding this correspondence to you as a result of your hearing. Unfortunately, due to prolonged negotiations with the United Teachers of New Orleans my office has been consumed with that task at the sacrifice of all others. However, please be assured that we have been verbally communicating with your attorney, Mr. Samuel, who is aware of the position we've taken as expressed in this letter. Your suspension without pay is a result of our forwarding a recommendation for your termination of employment for incompetency to the Board for formal action. Pending such action by the Board in accordance with La. Revised Statutes 17:462 you are to remain on suspension without pay. If you are successful in defending yourself at a

tenure hearing with the School Board, all back pay will be restored to you.

In our opinion the evaluation completed by Dr. Carol Chance, Principal, Rabouin is procedurally sound. Dr. Chance conducted the first formal observation on November 10, 1986 citing areas A2, 3, 4, and B3 as "needs improvement." An assistance schedule was also completed. The second formal observation was conducted on February 12 with four areas rated "Needs improvement": A1, 2, 3, 4. A very thorough, detailed assistance schedule was provided allowing you a month to implement. The third formal observation was conducted on March 23: six areas were rated "Needs improvement": A1, 2, 3, 5; B1, 3, and A4 were rated "unsatisfactory." Again a very thorough assistance schedule was provided at the post-observation conference. Final observa-

vation, conducted as a follow-up, was made on April 9, 1987. Final observation form showed three "needs improvement" areas: A2, 3, and B1; two "unsatisfactory" areas: A4 and 5.

We believe the Principal, through the appropriate evaluation procedure, has documented sufficient evidence to request your dismissal from employment based on the "unsatisfactory" overall rating on your Performance Evaluation Report. We are forwarding your files to the Board attorneys requesting that they prepare formal tenure charges. As a tenured employee, you are entitled to a hearing in front of the Board and will be so notified of such.

cc: Dr. E. Williams
Mr. John Smith
Dr. C. Chance
Ms. E. Voilkel
Mr. F. Endom
Mr. L. Samuels
Ms. C. Goodly

Respectfully,

Frank D. Fudesco
Employee Relations Officer

SUBPART B. TEACHERS--
ORLEANS PARISH

§ 461 Probation and tenure of teachers

All eachers shall serve a probationary term of three years reckoned from the date of appointment in the parish of Orleans, during which term the Orleans Parish school board may dismiss or discharge any such probationary teacher upon the recommendation of the superintendent of public schools for the Parish of Orleans, accompanied by the written reasons therefor.

Any probationary teacher found unsatisfactory by the Orleans Parish school board at the expiration of the said probationary period shall be notified in writing by the board that he has been discharged or dismissed; in the absence of such notification, the probationary teacher shall automatically be-

come a regular and permanent teacher in the employment of the Orleans Parish school board; all teachers employed by the Orleans Parish school board as of July 25, 1944 who hold proper certificates, and who have served as such in Orleans Parish for more than three consecutive years, are declared to be regular and permanent teachers in the employ of the Orleans Parish school board.

Statutes Involved:

Louisiana Teacher Tenure Statute: Louisiana Revised Statute 1950, Under the Provision of Title 17, Section 443

§ 443. Removal of teachers; procedure; right to appeal

A. A permanent teacher shall not be removed from office except upon written and signed charges of willful neglect of duty, or incompetency of dishonesty, or of being a member of or contributing to any group, organization, movement or corporation that is by law or injunction prohibited from operating in the state of Louisiana, and then only if found guilty after a hearing by the school board of the parish or city, as the case may be, which hearing may be private or public, at the option of the teacher. At least twenty days in advance of the date of the hearing, the superintendent with approval of school board shall furnish the teacher with

a copy of the written charges. Such statement of charges shall include a complete and detailed list of the specific reasons for such charges and shall include but not be limited to the following: date and place of alleged offense or offenses, names of witnesses called or to be called to testify against the teacher at said hearing, and whether or not any such charges previously have been brought against the teacher. The teacher shall have the right to appear before the board with witnesses in his behalf and with counsel of his selection, all of whom shall be heard by the board at said hearing. For the purpose of conducting hearings hereunder the board shall have the power to issue subpoenas to compel the attendance of all witnesses on behalf of the teacher.

Louisiana Revised Statute 1950, Under the Provision of Title 17, Section 462

§ 462. Permanent teachers; causes for removal; procedure

A. A permanent teacher shall not be removed from office except on written and signed charges of immorality, or of wilful neglect of duty, or of incompetency, or of being a member of or of contributing to any group, organization, movement or corporation that is prohibited by law or injunction from operating in the State of Louisiana, and then only if found guilty after a hearing by the Orleans Parish School Board, which hearing may be private or public, at the option of the teacher. At least fifteen days in advance of the date of the hearing, the school board shall furnish the teacher with the Following:

(1) A copy of the written charges;

(2) A list of the names and last

known addresses of all witnesses the board may or will use at the hearing;

(3) A copy of all documents the board will or may introduce during the course of the hearing.

The teacher shall have the right to appear before the board with witnesses in his behalf ~~and~~ with counsel of his selection all of whom shall be heard by board at the said hearing. At least fifteen days in advance of the date of the hearing, the teacher shall furnish to the school board the following:

(1) A list of the names and addresses of all witnesses the teacher may or will use at the hearing;

(2) A copy of all documents the teacher will or may introduce during the course of the hearing.

Nothing herein contained shall be construed as depriving the Orleans Parish

School Board or any teacher thereof of any right of action it or they may be entitled to under the constitution and laws of the State of Louisiana.

For the purpose of conducting hearings or investigations hereunder, the board shall have the power to administer oaths and affirmations and the power to issue subpoenas in the name of the State of Louisiana to compel the attendance of witnesses and the production of documentary evidence. All such subpoenas shall be served by the sheriff or any deputy of the parish to which the same is directed; and such sheriff or deputy shall be entitles to no fee for serving such subpoenas. In the event any person fails or refuses to obey a subpoena issued hereunder, any district court of this state within the jurisdiction of which the hearing is held or within the jurisdiction of

which said person is found or resides, upon application by the board or its representatives, shall have the power to compel such person to appear before the board and to give testimony or produce evidence as ordered; and any failure to obey such an order of the court may be punished by the court issuing the same as a contempt thereof.

(b). If a permanent teacher is found guilty by the school board, after due and legal hearing as provided herein, on charges of wilful neglect of duty, or of incompetency, or immorality, or of being a member of or of contributing to any group, organization, movement or corporation that is prohibited by law or injunction from operating in the state of Louisiana, and ordered removed from office or disciplined by the said board, the teacher may, not more than one year from the date

of said finding, petition a court of competent jurisdiction for a full hearing to review the action of the school board, and the court shall have jurisdiction to affirm or reverse the action of the school board in the matter. If the finding of the school board is reversed by the court and the teacher is ordered reinstated and restored to duty, the teacher shall be entitled to full pay for any loss of time or salary he may have sustained by reason of the action of the said school board.

Amended by Acts 1956, No. 252 § 1; Acts 1972, No. 329, § 1; Acts 1974, No. 645, § 1.

Act 9, First Extraordinary Session of the 1977 Louisiana Legislature and Act 621 of the Revised State Guideline for LEA Personnel Evaluation Programs (1977 La. Rev. Stat. 17:391.5)

Every teacher shall be evaluated every third year by a team of evaluators, at least one of whom shall be the teacher's principal or, if the teacher is employed in a situation where there is no principal, the equivalent level supervisor, and at least one of whom shall be an independent observer employed elsewhere.

The evaluation shall be a synthesis of observations made by and recorded on the appropriate standard instrument developed for the purpose pursuant to La. Rev. Stat. 17:391.5. The evaluation may result in either a satisfactory, need improvement, or non-satisfactory evaluation.

Each teacher who received a non-satisfactory evaluation, when evaluated as provided in Subsection A of this

section, shall undertake a program of remediation and reevaluation. The program of remediation shall include activities directed by the teacher's principal, as well as self-directed activities.

During the first year following a non-satisfactory evaluation, the teacher shall be assessed for subject matter competency as well as reevaluated. If by the end of the first year of remediation and reevaluation, the teacher receives a satisfactory evaluation and is deemed satisfactory regarding subject matter competence, then the remediation and reevaluation program will terminate and the teacher shall not be evaluated again, as provided for in this section, for three years.

If the teacher does not receive a satisfactory evaluation or is not deemed satisfactory regarding subject matter

competence during the first year, the remediation program shall continue and the board shall certify the teacher as "Provisional/In Remediation," as provided in L.R.S. 17:391.5.

If the teacher does not receive a satisfactory evaluation and satisfactory subject matter assessment by the end of the second year, then the "Provisional/In Remediation" certificate shall expire and no further certification shall be issued. La. Rev. Stat. 17:391.5.

LEAVES OF ABSENCE (Continued)

Name	Title	School/Department	Type of Leave	Effective Date
Raines, Mr. Oscar (No Pay)	Bus Driver Platoon	Transportation Dept	Sick leave	06/04/87-01/15/88 EXTENSION
Saunders, Mrs. Carrie J.	Librarian	Walker Senior	Sick leave	05/13/87-01/20/88
Sykes, Mrs. Betty	Food Service Tech	Food Service	Sick leave	08/24/87-01/01/88
Taylor, Mrs. Sylvia L.	Elem Tchr	Schaumburg	Sick leave	08/27/87-12/21/87
Tolbert, Mr. Thomas C.	Kindergtn Tchr	Chester	Sabbatical	08/27/87-01/20/88
Walker, Mrs. Lydia (No Pay)	Tchr Aide	Title I/McD #19	Sick leave	08/27/87-09/14/87
Williams, Mrs. Leola W. (Pay for days earned)	Accounting Clk III	Dept of Finance	Sick leave	08/17/87-08/31/87
Wilson, Mrs. Lavinia A.	Spec Ed Tchr	Karr Middle	Sabbatical	03/05/87-01/20/88
Fuller, Mrs. Carol H.	Liaison Asst	Migrant Education	Military	09/05/87-09/18/87
Broussard, Mr. Leo J. (3/4 Pay)	Electrician	Maintenance	Meritorious	07/20/87-01/20/88
Claxton, Mrs. Ramona F. (Full Pay)	Elem Tchr	Benjamin	Meritorious	08/27/87-02/26/88
Allen, Mrs. Beverly T. (With Pay)	Sp Ed Tchr	Wilson	Suspension	08/27/87-11/01/87
Anderson, Mr. Willie J. (No Pay)	Bus Driver Reg	Transportation	Suspension	07/14/87-12/31/87 EXTENSION
Coleman, Mr. Reed E. (No Pay)	Spec Ed Tchr	Carver Middle	Suspension	08/27/87-11/01/87
Glorioso, Mrs. Cheryl B. (No Pay)	Bus Driver Reg	Transportation	Suspension	06/10/87-07/13/87
Jones, Mrs. Catherine A. (No Pay)	Elem Tchr	Edwards	Suspension	08/27/87-11/01/87
Klein, Mr. Victor C. (No Pay)	Librarian	Easton Sr	Suspension	08/27/87-11/01/87
Martin, Mr. Jarchie N.	Principal	Woodson Middle	Suspension	08/11/87-10/01/87
Moore, Mrs. Eola L. (No Pay)	Sec Tchr	Rabouin Voc	Suspension	08/27/87-11/01/87
Moore, Mr. Frederick W.	H/W Fund Admin	Employee Relations	Administrative	07/01/87-06/30/88 EXTENSION
Mosley, Mr. Edgar J. (No Pay)	Bus Driver Reg	Transportation Dept	Suspension	07/01/87-08/26/87
Reason, Mr. Gerald A. (No Pay)	Sec Tchr	Behrman Middle	Suspension	08/27/87-11/01/87
Richard, Mrs. Barbara (No Pay)	Elem Tchr	Guste	Suspension	08/27/87-11/01/87
Simmons, Mr. Ronald G. (No Pay)	Bus Driver Reg	Transportation Dept	Suspension	06/23/87-10/31/87 EXTENSION
Thompkins, Ms. Gloria H. (No Pay)	Elem Tchr	Wilson	Suspension	08/27/87-11/01/87
Varnado, Mrs. Terry C. (No Pay)	Bus Aide	Transportation Dept	Suspension	07/14/87-10/31/87 EXTENSION
Washington, Mrs. Celender (No Pay)	Sec Tchr	Easton Senior	Suspension	08/27/87-11/01/87